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November 8, 2022

VIA ECF

The Honorable Paul A. Engelmayer
United States District Judge
United States District Court
Southern District of New York
40 Foley Square, Room 2201
New York, NY 10007

Re: Barnes v. Metro Franchising Commissary LLC (1:22-cv-05178) (PAE) (BCM)
Joint Letter Regarding Notice of Voluntary Dismissal

Dear Judge Engelmayer:

We represent Defendant Metro Franchising Commissary LLC (“Defendant Metro”) in the above-referenced matter. On behalf of Defendant Metro and Plaintiffs Thomas Barnes and Khaliq Johnson (collectively, “Plaintiffs”) (Plaintiffs and Defendant Metro collectively the “Parties”), we submit this letter in response to the Court’s November 4, 2022 Order regarding Plaintiffs’ notice of voluntary dismissal of this action without prejudice.

The Parties maintain that Plaintiffs’ voluntary dismissal of their claims without prejudice is not part of a settlement that requires judicial review because the Parties have not reached an agreement regarding Plaintiffs’ Fair Labor Standards Act (“FLSA”) claims. Plaintiffs are not releasing any FLSA claims or waiving any FLSA rights in connection with the dismissal of this action. *See Samake v. Thunder Lube, Inc.*, 24 F.4th 804, 810 (2d Cir. 2022) (explaining “district courts [a]re required to review the fairness of a settlement waiving FLSA rights” before giving effect to dismissal of such claims) (emphasis added). To the contrary, Plaintiffs are retaining their rights to pursue FLSA claims against Defendant Metro and Defendant Glen Wayne (collectively, “Defendants”) in the future.

Under these circumstances, in the absence of any payment, promise, or other benefit offered by Defendants in exchange for a release of FLSA claims or a waiver of FLSA rights, the Parties believe Plaintiffs’ filing of a notice of dismissal without prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) requires the dismissal of this action. Accordingly, the Parties request this Court permit Plaintiffs’ notice of dismissal without prejudice. *See id.* at 810.

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We thank the Court for its attention to this matter.

Respectfully submitted,
/s/ Jerrold Goldberg
Jerrold Goldberg
Shareholder

cc: Joshua Levin-Epstein, Esq. (*via* ECF)
Jason Mizrahi, Esq. (*via* ECF)

The Court, having been assured that the parties' stipulated voluntary dismissal at docket 18 does not involve the dismissal of plaintiff's FLSA claims in exchange for any promise, payment, or other benefit from the defendant requiring review under *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2d Cir. 2015), directs the Clerk of the Court to approve the voluntary dismissal pursuant to Federal Rule of Civil Procedure 41 and to close this case. SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge
November 10, 2022